

September 27, 2011

Pam Bondi, Esq.
Attorney General
Department of Legal Affairs
The Capitol, PL01
Tallahassee, Florida 32399-1050

Re: Request for Attorney General's Opinion by Sumter County, Florida

Dear Attorney General Bondi:

The Board of County Commissioners of Sumter County, Florida ("County"), respectfully submits this request for an Attorney General Opinion on the following questions related to the method and level of funding the County is obligated to provide Community Substance Abuse and Mental Health Services programs pursuant to Chapter 394, Part IV, Florida Statutes, together with questions related to the County's allowable level of participation in the budgeting process for any entity provided such funding.

QUESTIONS PRESENTED:

1. What is the formula, and source of data represented therein, utilized to calculate County's portion of "local matching funds" as required by Florida Statute § 394.76, and are "in-kind" contributions considered in the formula?
2. What level of public stewardship or disclosure can County require in order to validate the source of the data found in any formula used to determine "local matching funds", such as disclosure of financial reports and sources of other available "local matching funds"?
3. What public oversight is afforded to the State or County over an entity requesting "local matching funds", such as participation in the operational and/or budget review and approval process of the entity receiving State and County funds pursuant to Florida Statute §394.76?
4. What is the process for determining the value of "in-kind" contributions used to offset any obligation County may have to provide "local matching funds"?
5. Who has the burden of establishing the level, source or availability of other "local matching funds" when a dispute between County and entity regarding County's appropriate level of funding?

FACTS:

Sumter County received a request for funding from LifeStream Behavioral Center, Inc., a Florida Non-Profit Corporation ("LifeStream"). LifeStream provides mental health, crisis stabilization and Baker Act services to the citizens of Sumter County

and Lake County. Currently, LifeStream provides County with a request for funding, and awaits approval of the request through the budget hearing process. County is not able to determine how the funding amount is determined, whether it takes other sources of funding into consideration, or whether it contemplates accommodations based on the fact that services are provided to residents of two (2) counties. It is undisputed that Sumter County is obligated, pursuant to F.S. §394.76(9), to participate in the funding of the mental health services provided by LifeStream on a three-to-one match basis with the State; however, F.S. §394.76(9), provides that “other available local matching funds” must be taken into consideration when determining the proportionate share of Sumter County’s matching obligation.

Sumter County has previously provided funding to LifeStream. In addition, County provides LifeStream with physical space, which LifeStream uses for various aspects of its operations. County believes that the provision of physical facilities to LifeStream should be considered an “in-kind” contribution which offsets its obligations under F.S. §394.76(9). LifeStream does not contest the fact that it receives a financial benefit from this arrangement.

It is County’s position that in order to properly evaluate and determine the appropriate level of “local matching funds” it is otherwise responsible for providing, any entity seeking funding pursuant to F.S. §394.76 should be required to disclose to County all sources of its “available local matching funds”.

Furthermore, to the extent County is obligated to provide funding pursuant to F.S. §394.76(9), County believes that it should be included in the planning, evaluation, auditing and implementation of the programs for which it provides funding.

Florida Statute §394.457(2)(a) indicates that the Department of Children and Family Services is designated as the “Mental Health Authority” of Florida, and is responsible for:

“The planning, evaluation, and implementation of a complete and comprehensive statewide program of mental health, including community services, receiving and treatment facilities, child services, research, and training as authorized and approved by the Legislature, based on the annual program budget of the department. The department is also responsible for the coordination of efforts with other departments and divisions of the state government, county and municipal governments, and private agencies concerned with and providing mental health services.”

F.S. §394.457(3) also provides, in pertinent part, that:

Baker Act funds for community inpatient, crisis stabilization, short-term residential treatment, and screening services must be allocated to each county pursuant to the department’s funding allocation methodology. Notwithstanding the provisions of s. 287.057(3)(f), contracts for community-based Baker Act

services for inpatient, crisis stabilization, short-term residential treatment, and screening provided under this part, other than those with other units of government, to be provided for the department must be awarded using competitive sealed bids when the county commission of the county receiving the services makes a request to the department's district office by January 15 of the contracting year.

Based upon the plain language of F.S. §394.76(9), County believes that other forms of available local matching funds must be identified, accounted for and considered prior to the commitment of any funding. Furthermore, based upon the language contained in F.S. §394.457, cited above, County should be authorized to participate in the planning, evaluation, auditing and implementation of the programs for which it provides funding. The Florida Statutes applicable to this scenario do not provide significant guidance to County as to how these determinations should be made; thus this request for an opinion has been submitted.

MEMORANDUM OF LAW AND OPINION OF COUNSEL:

The issue of whether or not County is obligated to provide local matching funds to agencies providing mental health services was addressed in *Sandegren v. State*, 397 So.2d 657 (1981). In the *Sandegren* case, the Supreme Court of Florida held that Sarasota County had an affirmative obligation to provide funding for certain mental health services, but also recognized that F.S. §394.76(9) provides that “The amount of the participation shall be at least that amount which, **when added to other available local matching funds**, is necessary to match state funds.” (emphasis added). The portion of matching funds required by the statute is a three-to-one ratio of state funds to “local matching funds”.

F.S. §394.67(13) defines local matching funds as;

“Funds received from governing bodies of local government, including city commissions, county commissions, district school boards, special tax districts, private hospital funds, private gifts, both individual and corporate, and bequests and funds received from community drives or any other sources to include funds from several different sources.”

Thus, County should not be considered the exclusive source of LifeStream's local matching funds. From a review of the *Sandegren* case, the Supreme Court has determined that the amount of County's participation must be at least an “amount which, when added to other available local matching funds, is necessary to match state funds.” *Id.* In order to determine County's appropriate level of funding, the amount of other available local matching funds must be determined.

Furthermore, County's donation of the building and space used by LifeStream at no cost constitutes an annual in-kind contribution that must be considered when determining County's obligation under the local matching requirements.

During discussions with LifeStream regarding these issues, LifeStream provided County with a Writ of Mandamus it believed to be persuasive of the issues, entered by Judge Audlin on July 7, 2011, in the Circuit Court of the Sixteenth Judicial Circuit, in and for Monroe County, Florida, styled ***Key West HMA, LLC d/b/a Lower Keys Medical Center, and as Depoo Hospital v. Monroe County Board of County Commissioners***, Case No.: CA-K-092158.

In entering the Writ of Mandamus, Judge Audlin considered two issues. First, whether Monroe County was obligated to provide local matching funds, and second, whether it was incumbent upon the service provider (Depoo Hospital) to account for any qualifying matching funds it may have received from any third party source. The Court determined that the Monroe County was obligated to provide the funding, and further, that Monroe County had the burden of demonstrating whether there were funds received from any third party source.

For purposes of this request, the first issue is moot, as Sumter County does not challenge the fact that it is obligated to provide some level of “local matching funds” to LifeStream. However, County does not agree with the opinion rendered by the Court in the ***Depoo Hospital*** case with regard to the determination that it was Monroe County’s burden to demonstrate third party funding. County would further point out that the aforementioned opinion is not binding upon the Attorney General in this matter, as it was never addressed by the District Court of Appeals due to the settlement of the case between the parties after the entry of the Writ of Mandamus. The Circuit Judge in the ***Depoo Hospital*** case did not rely on any legal authority in the form of case law in determining that Monroe County had an obligation to demonstrate any third party funding in order to justify any reduction in the amount of funds it was obligated to pay pursuant to statute. Sumter County would argue that this case is not persuasive, and that the plain language of F.S. §394.76(9) implies a duty on the service provider to make its records available for inspection by the local government in an effort to properly ascertain its appropriate level of funding.

The authority cited herein clearly establishes that Sumter County does not have an exclusive duty to fund LifeStream, and that other factors must be considered in determining what County’s appropriate level of local matching funds should be. Therefore, Sumter County respectfully requests an Opinion from the Attorney General regarding the questions contained herein.

CONCLUSION

Sumter County is required to participate in matching state funds to service providers of community mental health services pursuant to F.S. §394.76(9). Determining the County’s exact obligation under the local matching requirement is a fact intensive inquiry that requires the guidance of the Attorney General, as there does not appear to be any binding authority which is on point. The undersigned counsel would provide the following legal opinions on the issues presented above:

1. The per capita rate established by the State of Florida for each county in determining its level of funding to those entities providing services pursuant to F.S. §394.76(9), should be consistent with the three-to-one local match ratio established by Florida Statutes. This would allow the local government to properly budget any required “local matching funds”. This would also provide local governments with a cap for the aforementioned funding if no other local matching funds were available, and would potentially fluctuate based on the State’s funding decisions. In the instance of an entity such as LifeStream that serves two counties the 25% would be divided for budgeting purposes between the two counties on a per capita basis. The actual payment obligation of a county could then be determined after all in-kind contributions and other local matching funds, such as funds provided under the Health Care Responsibility Act, grants, donations, fees for services, etc., were validated.
2. County should be afforded the opportunity to review financial reports and other materials disclosing the availability of other sources of “local matching funds”
3. County should be afforded the ability to participate in the operational and/or budget review and approval process of the entity receiving State and County funds pursuant to Florida Statute §394.76
4. “In-kind” contributions used to offset any obligation County has to provide local matching funds should be properly documented and credited accordingly.
5. Due to the receipt and use of state and county public funds, the private service provider should be subject to all open records and open meeting requirements, as provided by Florida’s Sunshine laws; furthermore, the private service provider should have the burden of validating the amount of any and all sources of “local matching funds”.

Thank you in advance for your consideration of the questions presented, as they are of significance to the citizens of Sumter County, Florida.

Sincerely,

George G. Angeliadis, Esq.
Hogan Law Firm
Sumter County Attorney